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[2207/6019]



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
Jay H. CONNELLY et al.

Examiner: Trang U. Tran

For: SYSTEM AND METHOD FOR
CONTROLLING AN ELECTRONIC
DEVICE

Art Unit: 2622

Filed: February 18, 1999

Serial No.: 09/250,940

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SIR:

Please find a Reply Brief Under 37 C.F.R. § 41.41 transmitted herewith for
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Respectfully submitted,

KENYON & KENYON LLP

Dated: 10 July 2004

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[02207/6019]

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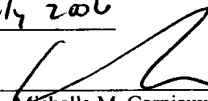
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Michelle M. Carniaux (Reg. No. 36,098)

REPLY BRIEF UNDER 37 C.F.R. § 41.41

SIR:

Appellants submit the present Reply Brief in response to the Examiner's Answer mailed June 16, 2006.

For the reasons set forth in the Appeal Brief and those set forth below, it is again respectfully submitted that the final rejections of claims 2 to 11, 13 to 16, 18 to 27, 29 to 33, 38, and 41 to 48 should be reversed.

Claims 1, 12, 17, 28, 37, 39, and 40 have been canceled. The rejections of claims 34 to 36 have been withdrawn. Claims 2 to 11, 13 to 16, 18 to 27, 29 to 33, 38, and 41 to 48 have been finally rejected.

Appellants incorporate herein arguments previously presented in the Appeal Brief dated March 24, 2006. In addition, the following comments are presented to further highlight the differences between the claimed subject matter and the applied prior art references.

Claims 13 to 15 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable any of claims 13 to 15 for at least the following reasons.

Claim 13 recites the following:

13. A generating device of a system for providing a transmission signal, the system controlling at least one target device, comprising:
a command receiver receiving a command signal for use in controlling the at least one target device, the command signal being received from a command device;
a command coder converting the command signal into a first signal, the command coder being coupled to the command receiver;
a data receiver receiving a data signal from an input device; and
a data coder converting the data signal into a second signal, the data coder being coupled to the data receiver;
a modulator coupled to the command and data coders and generating the transmission signal using the first and second signals; and
a transmitter coupled to the modulator and transmitting the transmission signal, wherein data in the command signal and data in the data signal are linked so that when the data signal is used at a receiving end of the transmission signal, the at least one target device is controlled as a function of the command signal while an output device at the receiving end provides an output as a function of the data signal.

With respect to a target device controlled as a function of the command signal while the output device provides an output as a function of the data signal, the Examiner refers to Jackson as allegedly disclosing these features. As set forth in the Appeal Brief, none of the VCR IR code list 35, the IR code selection 11, the EPG (Electronic Programming Guide) selection 7, and the EPG 22 discloses or suggests the recited command signal.

In response to Appellants' discussion regarding the VCR IR code list 35, the Examiner, in the Examiner's answer, asserts that the VCR IR code list 35 discloses the command signal because "the VCR IR code list 35 and EPG 22 are constructed from [sic] data 29 contained in the downlinked signals 3 and the CPU 16 uses the VCR IR codes and EPG to send commands that corresponding [sic] to 'begin recording' and 'terminate recording.'" However, the Examiner's argument is faulty for the following reasons.

The VCR IR code list 35 is not used to control VCR recording. Instead, the VCR IR code list 35 is displayed so that a user may select one of the listed codes. The selected code 11 is stored for access thereto to control VCR recording. Thus, it is the code selection 11, rather than the VCR IR code list 35, that is used for control of the VCR.

Furthermore, even if one assumes for the sake of argument that that the VCR IR code list 35 is a command signal as a function of which the VCR is controlled, which Appellants do not concede, nevertheless, the VCR IR code list 35 does not disclose a command signal on which basis, in combination with a data signal, a transmission signal is

generated, and a target device is controlled while output is provided by an output device as a function of the data signal, *i.e.*, the data signal with which, in combination with the command signal, the transmission signal was generated. While, the VCR IR code list 35 may be transmitted in downlinked signals 3, the VCR IR code list 35 is not transmitted in or used for generation of a transmission signal that is based on, or in which is transmitted, the data signal of the output that is provided as a function of the VCR IR code list 35 (assuming the causal nexus for the sake of argument only).

Instead, programming data that is transmitted at about the time of transmission of the VCR IR code list 35 is output prior to any use of the code list 35 for controlling the VCR (assuming the causal nexus for the sake of argument only). At most, programming data that is transmitted at about the time of transmission of the VCR IR code list 35 is output while a user calls the VCR IR code list 35 to select a code selection 11. The selection 11 is then stored for later use. By the time the selection 11 is used for control of the VCR, it is long since the time of output of the content that had been transmitted at about the time of transmission of the VCR IR code list 35. In this regard, it is noted that simply because the transmission methods used for transmitting the VCR IR code list 35 and for transmitting content to be output may be the same, does not lead to a conclusion that the features recited in claim 13 are disclosed.

It is further noted that although Appellants have essentially set forth the above arguments in the Appeal Brief, the Examiner, in the Examiner's answer, does not respond to these arguments with respect to claim 13, but does attempt a response with respect to claim 16 at pages 17 to 18 of the Examiner's Answer. The Examiner there asserts that a link in transmission between the command signal and the data signal as a function of which output is provided is disclosed at column 3, lines 53 to 56, which states that "[i]n the preferred embodiment, the error correction and packet synchronization module 24 may combine a QPSK decoder and a Reed-Solomon and Viterbi forward error corrector." The Examiner posits that the cited section of Jackson discloses the features recited in the present claims, but, other than quoting the cited section, does not explain, nor is it apparent, how it so discloses the recited features. Indeed, it is respectfully submitted that the cited section does not disclose the features recited in claim 13 (nor claim 16 as set forth below). In fact, it is readily apparent that the Examiner is grasping at straws, picking and choosing various features of the cited references and using improper hindsight based on Appellants' disclosure to somehow reconstruct the features recited in the claims. The Examiner's arguments are akin to placing different colored paints into a pot and expecting a picture to form therefrom.

Thus, the VCR IR code list 35 is not a command signal, and even assuming for the sake of argument that it is a command signal, it is certainly not used for controlling a target device while output is provided at an output device as a function of a data signal that had been used in conjunction with the VCR IR code list 35 for generating a transmission signal.

The Examiner's discussion in the Examiner's answer is not responsive to Appellants' arguments concerning the EPG. However, for the sake of completeness, since the Examiner in the Examiner's answer makes reference once again to the EPG, Appellants reiterate that the EPG does not disclose or suggest the recited command signal.

As set forth in the Appeal Brief, the EPG is not a command signal. At a receiving end of the signal, the CPU 16 may determine based on the EPG whether or not to control the VCR 38. The EPG is used for comparison with a previously stored signal (the EPG selection 7 stored in a memory 15) to determine when a selected program starts and stops. Based on the comparison, the CPU 16 controls the VCR 38. However, the EPG itself is not a signal that commands such control.

Furthermore, even if the EPG is a command signal, which it is not, control of a target device in accordance with the EPG *while* data is output by an output device based on a data signal with which the EPG was transmitted is not disclosed or suggested.

For example, nowhere does Jackson disclose or suggest controlling the VCR 38 in accordance with the EPG *while* outputting data at the TV/Monitor 36, where the output data and the EPG are transmitted together. The EPG is transmitted by the uplink center 1 at time intervals together with data to be output at the TV/monitor 36. Jackson does not disclose or suggest that the data with which a particular EPG is transmitted by the uplink center 1 is output at the TV/monitor 36 while the VCR 38 is controlled based on the comparison between the EPG selection and the particular EPG transmitted when the output data signal was transmitted. For example, based on the comparison, the VCR 38 may be controlled immediately subsequent to the output of data with which the EPG was transmitted; *not at the same time*. By the time the VCR 38 is controlled in accordance with the comparison, the data with which the EPG was transmitted would have already been output at the TV/monitor 36, and, instead, other data *transmitted subsequent to the transmission of the EPG* would be output at the TV/monitor 36. Accordingly, the EPG does not disclose or suggest a command signal that is transmitted in a transmission signal with a data signal and that causes control of a target device while output is provided by an output device as a function of the data signal with which the command signal was transmitted.

Accordingly, for the reasons set forth above and in the Appeal Brief, neither Michaud nor Jackson, alone or in combination, discloses or suggests the control of a target device while an output device provides an output, where such control and output is performed as a function of a command signal and a data signal, respectively, that were used for generating a transmission signal.

Thus, the combination of Michaud and Jackson does not disclose or suggest all of the features recited in claim 13. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 13 or its dependent claims, *i.e.*, claims 14 and 15.

Claims 16, and 18 to 26 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable any of claims 16, and 18 to 26 for at least the following reasons.

Claim 16 recites the following:

16. A control device of a system, the system controlling at least one target device, comprising:
a receiver receiving a transmission signal;
a demodulator extracting a first signal and a second signal from the transmission signal;
a command decoder decoding the first signal into the command signal;
a data decoder decoding a data signal from the second signal; and
a data transmitter receiving the data signal and providing the data signal to an output device;
wherein the at least one target device is controlled as a function of the command signal while an output device provides an output as a function of the data signal.

As set forth above in support of the patentability of claim 13, the combination of Michaud and Jackson does not disclose or suggest the features of a first signal decoded into a command signal that (a) is transmitted in a transmission signal with a second signal from which a data signal is decoded and (b) causes control of a target device while output is provided by an output device as a function of the second signal with which the first signal was transmitted.

With respect to the VCR IR code list 35 of Jackson, the Examiner, in the Examiner's answer, asserts the same deficient arguments asserted with respect to claim 13, but additionally refers to column 3, lines 53 to 56 as allegedly disclosing the "additional limitation 'that were decoded from [*sic*] the same transmission signal.'" As set forth above in support of the patentability of claim 13, the Examiner posits that the cited section of Jackson discloses the features recited in claim 16, but, other than quoting the cited section, does not

explain, nor is it apparent, how it so discloses the recited features. Indeed, it is respectfully submitted that the cited section does not disclose the features recited in claim 16.

Accordingly, for the reasons set forth above and in the Appeal Brief, neither Michaud nor Jackson, alone or in combination, discloses or suggests the control of a target device while an output device provides an output, where such control and output is performed as a function of a command signal and a data signal, respectively, that were decoded from the same transmission signal.

Thus, the combination of Michaud and Jackson does not disclose or suggest all of the features recited in claim 16. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 16 or its dependent claims, *i.e.*, claims 18 to 26.

Claims 27, and 29 to 32 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable any of claims 27, and 29 to 32 for at least the following reasons.

Claim 27 recites the following:

27. A method for controlling at least one target device, comprising:
- (a) providing a command signal and a data signal to a first device, the command signal being associated with the data signal;
 - (b) converting the command and data signals to a transmission signal using the first device;
 - (c) transmitting the transmission signal to a second device;
 - (d) extracting the command signal from the transmission signal using the second device;
 - (e) controlling the at least one target device as a function of the command signal;
 - (f) extracting the data signal from the transmission signal using the second device; and
 - (g) providing the data signal to an output device, the output device providing an output as a function of the data signal while the at least one target device is controlled as a function of the command signal associated with the data signal.

With respect to claim 27, the Examiner reasserts the same arguments set forth by the Examiner with respect to claim 13. As set forth above in support of the patentability of claim 13, the combination of Michaud and Jackson does not disclose or suggest the features of a command signal that causes control of a target device while output is provided by an output device as a function of the data signal that was extracted from the same transmission signal as was the command signal.

Accordingly, for the reasons set forth above and in the Appeal Brief, neither Michaud nor Jackson, alone or in combination, discloses or suggests the control of a target device while an output device provides an output, where such control and output is performed

as a function of a command signal and a data signal, respectively, that were used for generating a transmission signal and that were extracted from the same transmission signal.

Thus, the combination of Michaud and Jackson does not disclose or suggest all of the features recited in claim 27. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 27 or its dependent claims, *e.g.*, claims 29 to 32.

Claim 38 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 38 for at least the following reasons.

Claim 38 recites the following:

38. A computer-readable storage medium storing a set of instructions, the set of instructions capable of being executed by a processor to implement a control operation of at least one target device on at least one computer system, the method comprising:
- (a) providing a command signal and a data signal to a first device, the command signal being associated with the data signal;
 - (b) converting the command and data signals to a transmission signal using the first device;
 - (c) transmitting the transmission signal to a second device;
 - (d) extracting the command signal from the transmission signal using the second device; and
 - (e) controlling the at least one target device as a function of the command signal while an output device provides an output as a function of the data signal to which the command signal is associated.

With respect to claim 38, the Examiner reasserts the same arguments set forth by the Examiner with respect to claim 13. As set forth above in support of the patentability of claim 13, the combination of Michaud and Jackson does not disclose or suggest the features of a command signal that causes control of a target device while output is provided by an output device as a function of the data signal that was converted into the same transmission signal as was the command signal.

Accordingly, for the reasons set forth above and in the Appeal Brief, neither Michaud nor Jackson, alone or in combination, discloses or suggests the control of a target device while an output device provides an output, where such control and output is performed as a function of a command signal and a data signal, respectively, that were used together for generating a transmission signal.

Thus, the combination of Michaud and Jackson does not disclose or suggest all of the features recited in claim 38. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 38.

Claims 2 to 9, and 41 to 44 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable any of claims 2 to 9, and 41 to 44 for at least the following reasons.

Claim 41 recites the following:

41. A communication and control system, comprising:
 - an input device generating a data signal;
 - a command device generating a command signal associated with the data signal;
 - a first device receiving the data and the command signal associated with the data signal, the first device generating a transmission signal including the data signal and the associated command signal;
 - a second device receiving the transmission signal and extracting the data signal and the associated command signal from the transmission signal;
 - an output device receiving the data signal from the second device; and
 - at least one target device controlled automatically as a function of the associated command signal while the output device provides an output as a function of the data signal.

With respect to claim 41, the Examiner reasserts the same arguments set forth by the Examiner with respect to claim 13. As set forth above in support of the patentability of claim 13, the combination of Michaud and Jackson does not disclose or suggest the features of a command signal that is transmitted in a transmission signal with a data signal and that causes control of a target device while output is provided by an output device as a function of the data signal with which the command signal was transmitted.

Accordingly, for the reasons set forth above and in the Appeal Brief, neither Michaud nor Jackson, alone or in combination, discloses or suggests the control of a target device while an output device provides an output, where such control and output is performed as a function of a command signal and a data signal, respectively, that were included in the same transmission signal.

Thus, the combination of Michaud and Jackson does not disclose or suggest all of the features recited in claim 41. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 41 or its dependent claims, *e.g.*, claims 2 to 9, and 42 to 44.

Claims 45, 46, and 48 stand finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable any of claims 45, 46, and 48 for at least the following reasons.

Claim 45 recites the following:

45. A method for controlling a target device, comprising:
 - receiving a data signal including content;
 - receiving a command signal, the command signal including commands, associated with the content, for controlling the target device; and
 - controlling the target device as a function of the commands while rendering the content associated therewith via an output device.

As set forth above in support of the patentability of claim 13, the combination of Michaud and Jackson does not disclose or suggest the features of a command signal that includes commands associated with content to be output while a target device is controlled as a function of the commands.

Aside for the arguments the Examiner asserts with respect to claim 13, the Examiner additionally refers to the EPG selection 7 of Jackson as allegedly disclosing the recited command signal. However, the EPG selection 7 is not associated with particular content of received data signals that is rendered. Instead, the EPG selection 7 is associated with a program as a whole (by virtue of its identification thereof) for which the content is provided. Thus, the EPG selection 7 does not disclose or suggest the command signal of claim 45.

Accordingly, for the reasons set forth above and in the Appeal Brief, neither Michaud nor Jackson, alone or in combination, discloses or suggests all of the features recited in claim 45. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 45 or its dependent claims, *e.g.*, claims 46 and 48.

Claim 47 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud and Jackson. It is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 47 for at least the following reasons.

As an initial matter, claim 47 depends from claim 45 and therefore includes all of the features recited in claim 45. It is therefore respectfully submitted that the combination of Michaud and Jackson does not render unpatentable this dependent claim for at least the same reasons set forth above in support of the patentability of claim 45. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) (any dependent claim that depends from a non-obvious independent claim is non-obvious).

Furthermore, claim 47 recites “wherein the commands are linked to the content so that the commands are available for accessing to control the target device each

time the content associated therewith is rendered.” In the Examiner’s answer, the Examiner asserts that the EPG selection 7 discloses the commands of a command signal of claim 47.

As set forth above in support of the patentability of claim 45, the EPG selection 7 does not disclose the command signal since it is not associated with particular content of received data signals that is rendered, but instead is associated with a program as a whole (by virtue of its identification thereof) for which the content is provided.

Additionally, even if one assumes for the sake of argument that the EPG selection discloses commands associated with rendered content by virtue of its identification of a program, at most the selection is stored for control of a VCR to begin recording prior to rendering of content of the program, and then again to terminate recording subsequent to the rendering of the content. The selection is not linked to the content in a manner to control a target device each time content associated therewith is rendered. That is, to the extent the selection may be considered to be associated with the content, it is certainly not linked for control of a device each time such content is rendered. The content of the program is provided after the VCR is controlled, and during such subsequent rendering, the commands are not used for controlling a device.

For this additional reason, it is respectfully submitted that the combination of Michaud and Jackson does not render unpatentable claim 47.

Claim 10 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud, Jackson, and Adams et al. It is respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable claim 10 for at least the following reasons.

Claim 10 ultimately depends from claim 41 and therefore includes all of the features recited in claim 41. Adams et al. do not correct the deficiencies of the combination of Michaud and Jackson noted above with respect to claim 41. It is therefore respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable this dependent claim for at least the same reasons set forth above in support of the patentability of claim 41.

Furthermore, while Adams et al. may provide for packetized digital data streams, nowhere does the combination of Michaud, Jackson, and Adams et al. disclose or suggest attachment of a command signal “to a data packet . . . *including the data signal*” if the transmission signal is in the digital format, as recited in claim 10.

In the Examiner’s answer, the Examiner asserts that attachment of a command signal to a data packet including the data signal (but for the data packet) is disclosed by the

combination of Michaud and Jackson for the same reasons as set forth with respect to claims 13 to 15 and 41. As set forth above in support of the patentability of claim 13, even if one assumes for the sake of argument that the VCR IR code list 35 is a command signal, which it is not, the VCR IR code list 35 is not transmitted along with a data signal as a function of which output is provided while a target device is controlled by the VCR IR code list 35. By the time the a code of the VCR IR code list 35 is selected and used for VCR control, the content transmitted at about the time the VCR IR code list 35 was transmitted would have already been output. Thus, none of Michaud, Jackson, and Adams et al., alone or in combination, disclose or suggest a command signal that is attached to a data packet of the transmission signal, where the data packet includes the data signal, *i.e.*, the data signal as a function of which output is provided while a target device is controlled as a function of the command signal.

For this additional reason, it is respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable claim 10.

Claim 11 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud, Jackson, and Adams et al. It is respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable claim 11 for at least the following reasons.

Claim 11 ultimately depends from claim 41 and therefore includes all of the features recited in claim 41. Adams et al. do not correct the deficiencies of the combination of Michaud and Jackson noted above with respect to claim 41. It is therefore respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable this dependent claim for at least the same reasons set forth above in support of the patentability of claim 41.

Claim 33 stands finally rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Michaud, Jackson, and Adams et al. It is respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable claim 33 for at least the following reasons.

Claim 33 depends from claim 27 and therefore includes all of the features recited in claim 27. Adams et al. do not correct the deficiencies of the combination of Michaud and Jackson noted above with respect to claim 27. It is therefore respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable this dependent claim for at least the same reasons set forth above in support of the patentability of claim 27.

Furthermore, while Adams et al. may provide for packetized digital data streams, nowhere does the combination of Michaud, Jackson, and Adams et al. disclose or suggest “attaching [a] command signal to a data packet . . . *including the data signal*”, as recited in claim 33.

In the Examiner’s answer, the Examiner asserts that attachment of a command signal to a data packet including the data signal (but for the data packet) is disclosed by the combination of Michaud and Jackson for the same reasons as set forth with respect to claims 13 to 15 and 27. As set forth above in support of the patentability of claim 13, even if one assumes for the sake of argument that the VCR IR code list 35 is a command signal, which it is not, the VCR IR code list 35 is not transmitted along with a data signal as a function of which output is provided while a target device is controlled by the VCR IR code list 35. By the time the a code of the VCR IR code list 35 is selected and used for VCR control, the content transmitted at about the time the VCR IR code list 35 was transmitted would have already been output. Thus, none of Michaud, Jackson, and Adams et al., alone or in combination, disclose or suggest attaching a command signal to a data packet of the transmission signal, where the data packet includes the data signal, *i.e.*, the data signal as a function of which output is provided while a target device is controlled as a function of the command signal.

For this additional reason, it is respectfully submitted that the combination of Michaud, Jackson, and Adams et al. does not render unpatentable claim 33.


For at least the reasons indicated above, Appellants respectfully submit that relied upon references do not disclose, or even suggest, Appellants’ invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the inventions recited in the claims of the present application are new, non-obvious, and useful.

For the foregoing reasons and for the reasons more fully set forth in the Appeal Brief, it is respectfully submitted that the final rejections of the pending claims should be reversed.

Respectfully submitted,

Dated: 10 July 2006

By



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